

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Deshana Renee Barner,

Plaintiff

v.

Centennial Hills Hospital, et al.,

Defendants

Case No: 2:24-cv-002309-JAD-NJK

**Order Denying Motion to
Transfer Case to State Court but
Dismissing Case So Plaintiff
Can Refile It in State Court**

[ECF Nos. 2, 9]

Plaintiff Deshana Renee Barner filed this action against a local hospital and physician, apparently asserting a claim for negligent infliction of emotional distress related to allegedly erroneous medical records. Because she proceeds *in forma pauperis*, the magistrate judge screened her complaint, found that Barner fails to allege a basis for federal jurisdiction, and dismissed the complaint with leave to amend.¹ Plaintiff has not yet filed an amended complaint, so there are currently no claims pending in this case. But she has filed a motion for change of venue, asking this court to transfer this case to Nevada state court under 28 U.S.C. § 1404(a). In that motion she acknowledges that “[t]he U.S. District Court for the District of Nevada lacks jurisdiction over [her] case, as the claims are rooted in state law and do not raise a federal question”; nor is there diversity jurisdiction because the parties, she concedes, are not diverse.²

The change-of-venue statute that Barner cites permits federal courts to transfer cases only to *other federal courts*, not to a state court.³ When a plaintiff realizes that the case she filed in

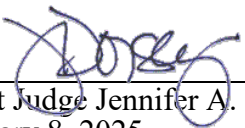
¹ ECF No. 7.

² ECF No. 9.

³ See 28 U.S.C. § 1404; *Pope v. Atl. Coast Line R.R. Co.*, 345 U.S. 379, 384 (1953) (“Section 1404(a), by its very terms, speaks to federal courts; it addresses itself only to that federal forum

1 federal court belongs instead in state court because she lacks a basis for federal jurisdiction, her
2 remedy is not to seek a transfer, but to seek dismissal so she can refile it in the proper state
3 forum. So I liberally construe Barner's concession that this court lacks subject-matter
4 jurisdiction over this matter as a request to dismiss her case so that she may file it in Nevada's
5 Eighth Judicial District Court.

6 IT IS THEREFORE ORDERED that Barner's request for a transfer of this case to state
7 court **[ECF No. 9] is DENIED.** But because she concedes that this court lacks subject-matter
8 jurisdiction over this case, I construe that acknowledgement as a request to dismiss it so that she
9 can refile it in state court. So **this case is DISMISSED without prejudice to Barner's ability**
10 **to refile it in Nevada state court.** The Clerk of Court is directed to **CLOSE THIS CASE**, and
11 the pending motion to toll the statute of limitations **[ECF No. 2] is DENIED** without prejudice
12 as moot in light of the case closure.

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14 U.S. District Judge Jennifer A. Dorsey
Dated: January 8, 2025

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in which a lawsuit has been initiated; its function is to vest such a federal forum with the power
to transfer a transitory cause of action to a more convenient federal court.”).